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1. Introduction

A relatively high level of social stability and a certain degree of tolerance are characteristic of Dutch society to the present day. In spite of the influx of immigrants and the presence of ethnic minorities there is very little racial conflict. Even in these times of economic depression, disputes between unions and employers are not fought to the bitter end. In the political decision-making process compromises are preferred over polarisation.[1] Experts play an important role in bridging the differences. There is a tendency in the Netherlands to leave it to the experts to decide on normative issues, such as under which circumstances euthanasia is admissible or whether or not the sale of certain drugs should be tolerated. Normative issues are reduced to technical, empirical questions for the experts to answer. In this way the issues are depoliticised: they are still on the political agenda, but the fierceness of the debate is tempered by the facts and rational considerations provided by the experts. The land of ministers and merchants is now the land of experts.

Experts also dominate the administration of justice. There is no jury system in the Netherlands and neither is there any input from laymen in the judiciary. Judges are formally appointed by the Minister of Justice, but they are de facto appointed on the recommendation of their peers. The administration of criminal justice is equally dominated by professionals. Police chiefs and public prosecutors are appointed on merit, not democratically elected based on their political preferences. This professionalisation is based on a firm belief in the democratic benefits of the *trias politica*, which finds particular expression in the relatively autonomous position assigned to the judiciary. The boundary between 'politics' and 'justice' is carefully guarded for the sake of the rule of law. There is a general wariness among judges and public prosecutors of the politicisation of the administration of justice. Opinions expressed by the Minister of Justice or statements by politicians on specific criminal cases are easily interpreted by the professionals as attacks on their independence. According to a recent poll, 85 per

[1] For an informative 'guidebook' to the Netherlands, see Shetter (2002).

cent of judges and prosecutors hold the view that politicians should not express any opinions on cases that are still under judicial consideration.[2]

The non-political, professional character of the administration of justice in the Netherlands proved to be a fertile breeding ground for the emergence of another type of expert: the research scholar. The ministries involved, the police, the public prosecutor, the judiciary, as well as the prison and probation services show a great deal of interest in research results. Scientific research plays an important role in the planning and assessment of government policies. Since 1973 the Ministry of Justice has its own research institute (the WODC – the Research and Documentation Centre), the largest Dutch institute in the field of justice, employing over 75 researchers and statisticians. Also other major research groups were formed at a number of universities. It is important that the services involved are, generally speaking, willing to cooperate with the research projects. The researchers are usually allowed to conduct observations and interviews and have access to case files. Over the past 30 years, a series of empirical studies was carried out into subjects as diverse as selectiveness in prosecution and the meting out of punishment, evaluations of new measures and sanctions, the effects of sanctions and patterns of recidivism. The field of organised crime has also been studied extensively since the early 1990s.[3] In this context, the research by Van Duyne (Van Duyne et al., 1990; Van Duyne, 1995), the research group Fijnaut (Parlementaire Enquêtecommissie, 1996; Fijnaut et al. 1998), Bovenkerk (Bovenkerk and Yeşilgöz, 1998; Bovenkerk, 2001), and the research group of the organised crime monitor (Kleemans et al., 1998, 2002) must be mentioned.

Other research projects were carried out on the effects of policies against organised crime. In a large-scale empirical study the effectiveness of new legislation aimed at depriving organised crime of its illicit earnings was evaluated by Nelen and Sabee (1998). The researchers examined the effects of the law, using interviews and official statistics, on the number of dispossession proceedings and the actual recoveries as ruled by the courts. In 1999, Kruissink, Van Hoorn and Boek published their research into the effects of the deployment of infiltrators in major investigations of organised crime (1999). What is remarkable about this project was the access the researchers gained to police files describing the infiltrations. Based on these files and on interviews with police officers and public prosecutors,

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2 'Rechterlijke macht onder vuur', *Vrij Nederland*, 11 October 2003.

3 With a few exceptions, all Dutch professors of criminology have shown an interest in studying organised crime and/or the fight against this phenomenon. Frank Bovenkerk (Utrecht), Gerben Bruinsma (Leiden), Henk Van de Bunt (Amsterdam, Rotterdam), Petrus Van Duyne (Tilburg), and Cyrille Fijnaut (Tilburg) have all published on organised crime in recent years.

Kruissink et al. assessed the effectiveness of the deployment of undercover agents in view of the final results of the investigation. The effectiveness of legal measures targeting money laundering, such as the obligation for financial service providers to report all unusual financial transactions to a focal point within the police force, was studied by Terlouw and Aron (1996) and by Faber and Van Nunen (2004).

During the course of these projects, all the above-mentioned researchers – with the exception of most members of the Fijnaut group[4] – were employed by the WODC. The WODC has therefore been the leading centre for research on the effects of policies designed to combat organised crime. The standing of the centre, as part of the Ministry of Justice, turned out to be an advantage in carrying out research on sometimes highly delicate matters. More recently, research on policies was also undertaken outside of the WODC: a commercial agency studied the effects of financial police investigations (Faber and Van Nunen, 2002) and the Vrije Universiteit (Free University) is evaluating the results of the administrative approach to organised crime in Amsterdam (Huisman et al., 2004).

The results of these research projects will be discussed later on, but one can already conclude that a lively tradition of research into the delicate theme of organised crime is developing in the Netherlands. The question is, of course, whether or not the results of these scholarly inquiries are of any importance to the authorities and the general public when it comes to the issue of tackling organised crime. For instance, how have government policies to fight organised crime developed over the years? What was the role of research in this development? In section 2, it will be argued that organised crime appeared high on the political agenda in the early 1990s, in marked contrast to the Dutch tradition of politicians staying away from judicial matters. The general public as well as the politicians were seriously concerned about the problem of organised crime and both were in favour of far-reaching measures. Incidents and journalists' opinions rather than scholarly knowledge determined the substance and the outcome of the public debate. Section 3, describes the most significant measures taken in the fight against organised crime, and discusses their effectiveness in the light of the available figures and evaluation studies. Section 4 deals with a number of organisational developments in the police and in the Public Prosecutor's Office. In conclusion, section 5 offers a summary and discussion.

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[4] The research group consisted of Cyrille Fijnaut, Frank Bovenkerk, Gerben Bruinsma and Henk Van de Bunt. The first three members were professors of criminology at different universities, during the time of the research Van de Bunt was the director of the WODC and professor of criminology in Amsterdam.

2. Developments in Organised Crime Policies

Over the past two decades, major changes have taken place in the public debate on crime and crime prevention. Crime has undoubtedly become a political issue. Since the early 1980s the general public as well as many politicians became increasingly critical of the effectiveness and efficiency of the administration of criminal justice, whereas in the past the fight against crime was entirely entrusted to the professionals. Between 1980 and 1984 recorded crime doubled in the Netherlands. Compared to the situation in 1970 the numbers quadrupled, while the expenditure on the police force and the justice system lagged far behind. Crime became a visible problem, a reality facing every citizen directly or indirectly, at one time or another, and for many citizens and politicians this constituted proof that the administration of criminal justice was not effective. In addition, the overburdening of the justice system led to sensational mistakes, as well as capacity problems resulting in cases being held over and a shortage of prison cells.

2.1. Policy Plan *Society and Criminality* (1985)

In 1985, the government drew up a white paper on the fight against crime that was to have major consequences for the administration of criminal justice in the Netherlands. For the first time in Dutch parliamentary history, politicians concerned themselves in-depth with the future direction of crime control. The white paper, entitled *Samenleving en criminaliteit* (*Society and Criminality*), was met with approval from political parties on all sides of the political spectrum. The plan was typically Dutch in that it managed to forge a compromise between the right and the left on a subject as charged as crime control, but it was by no means a watered-down document. It had a visionary quality and it contained an innovative policy plan pointing to new directions in crime prevention.

The document did *not* propose a 'more-of-the-same approach' to keep up with the rise in crime, i.e. more personnel for the police force and the justice system and more prison cells. More money was certainly allocated to these areas, but the most important message of the white paper was that the effort to control the crime problem should no longer be a matter for the police and the justice system alone. The paper stated:

> Maintaining law and order is not exclusively the task of the police and the justice system. In the judgment of the government, the rise in petty crimes, mostly committed by minors, could and should be halted by inducing an increased sense of responsibility in parents, local residents, local authorities and other social organisations with a view to crime prevention (*Samenleving en criminaliteit*, 1985: 13).

The document refers to increased surveillance by individuals and organisations, as well as to 'techno-prevention'. It also suggests a strengthening of the ties between adolescents and society. The emphasis in this policy document is clearly on *preventing* crime, especially by mobilising people and services outside of the justice system.

In dealing with serious crime, 'especially organised crime, including trafficking in hard drugs', the paper announced a policy of tough criminal prosecution, 'the exclusive task of the police force and the justice system'.[5] This repressive side of the white paper did not receive as much attention in the mass media and in the political debate as the more benevolent approach to petty crime propagated in the same document. The plan stated, without a clear empirical foundation, that although the Netherlands had long been exempt from the problem of organised crime, a 'large-scale underworld rooted in society' was now threatening to emerge. The white paper allocated considerable funds to the strengthening of inter-regional police cooperation in the areas of intelligence and investigation dealing with organised crime.

The parties on the left as well as the right agreed with the two-pronged strategy: the prevention of petty crimes and a tough approach to organised crime. The policy plan is an example of what Garland terms the 'responsibilisation' of society (Garland, 1996: 445-71). Encouraged and partially funded by central government, local authorities and the business community did indeed invest in the prevention of petty crime. By emphasising the role of society as a whole the white paper indicated that the fight against crime is not only the mandate of professionals, but also of the political community. In this way, the government document confirmed the growing interest in the fight against crime from local political authorities. At the local level, mayors and public prosecutors became partners in consultations with the police on their priorities and procedures.

Crime policies embedded at the local political level resulted in the neglect of supra-local organised crime. Why would the mayor of a town plagued by burglaries and robberies, have detectives work many months on international organised crime that did little visible damage to the community? In other words, the short-term effects of the white paper were an increase in funds for the criminal justice system's fight against organised crime, but in the public and political arena the attention was still focused on the problem of petty crimes. This situation would change dramatically at the end of the 1980s.

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[5] Bank fraud, environmental crimes, and illegal gambling are also mentioned in the document. All these different kinds of crime were classified as organised crime.

2.2. The Turnabout

In 1988, crime journalist Bart Middelburg published a book with the ominous title *The Mafia in Amsterdam* (Middelburg, 1988). He described how members of American mafia families had tried to run illegal casinos in Amsterdam in the 1970s. His findings were later confirmed by Block (1991) and by Fijnaut and Bovenkerk (1996), but at the time his book was met with disbelief. These reactions were typical of the prevailing climate, where stories about the seriousness of organised crime were laughed off as myths. However, at the end of the 1980s the Amsterdam police pointed for the first time to the threat posed by organised crime. Leading police officers confidentially briefed members of Parliament and prosecutors, especially on the dominant position of several Dutch and Surinamese criminals in the international trafficking of cannabis and cocaine. Possible penetration by these criminals into the legitimate world (economy, real estate, politics) was at the forefront of the discussions.

A team of police crime analysts drew up a nationwide quantitative overview of criminal groups in the Netherlands in 1988. The analysts' definition of organised crime leaned heavily on images of organised crime in the United States and on American publications. The team sent questionnaires to police forces all over the country asking them if they were aware of the existence of groups that would meet one or more of the following five criteria:

- Is the group active in several fields (drugs, weapons, fraud, among others)?
- Is there a hierarchy and a fixed assignment of tasks?
- Is there an internal system of sanctions, with rewards and punishments?
- Are the proceeds of crime being laundered with the aid of experts?
- Does the group make use of corruption (business world, government)?

It was left to the police forces to answer the questions per group. It later turned out that different police forces answered the questions differently and there were also problems with non-response and double-counting. The results of this nationwide stock-taking were nevertheless published without reservations: according to the report there were 189 criminal groups that met one or more criteria. Three groups were supposed to meet all five of them (Fijnaut et al., 1998: 10-13). The problem with this statement of affairs was that the results were published but the methodology kept secret.

The publication of the number of cases of organised crime drew considerable media attention. The public at large as well as the politicians became convinced that the problem of organised crime in the Netherlands had been grossly underestimated. In 1990 this impression was reinforced by an empirical study published by the WODC, written by Petrus Van Duyne, Ruud Kouwenberg and Gerard Romeijn,

who made use of police files to sketch a broad panorama of 'organised crime', ranging from drug trafficking to cases of entrepreneurial crime, including trading in waste material and value added tax (VAT) fraud. The unintended result of this publication was a growing unease, mainly because the authors used the rather broad definition of organised crime as crime committed by 'criminal entrepreneurs.' Petrus Van Duyne put the distinction between criminal entrepreneurs and the legitimate industry into perspective. He objected to the idea of organised crime penetrating into the legitimate world by stating that 'more and more sections [of the legitimate industry] are affected by crime enterprises, not because of an outward threat by the superior "evil genius" of organised crime, but because of the venality of the so-called "upperworld"' (Van Duyne, 1991: 69).

In addition to these research publications, a number of incidents played an important role in making the public aware of the problem of organised crime, particularly the killing of the so-called mafia boss Klaas Bruinsma on the streets of Amsterdam in 1991. For several years newspapers had been reporting on his involvement in the import and wholesale trafficking of cannabis. The newspaper articles about his 'empire', his wealth and the killings he ordered, were met with disbelief at first, but his assassination was proof to many that the Netherlands was facing a serious social problem, the contours of which were still unclear. The initial disbelief turned into a sense of urgency. In 1992, the Dutch government, at the request of Parliament, issued a white paper on the fight against organised crime.

2.3. White Paper 'Organised Crime in the Netherlands' (1992)

In spite of the fact that there was little precise information in 1992 on the true nature and size of organised crime in the Netherlands, the Minister of Justice made some firm statements in that same year. He argued that as a result of the large profits made by drug dealers 'modern criminal organisations and the legal economy are interwoven to a much larger degree than in the past' (Nota, 1992-1993: 2). The fact that not much was known empirically about the exact shape of the problem did not stop him from reaching firm conclusions; rather, the lack of hard facts was presented as a subject of concern, to the extent that the problem of organised crime was its invisibility: 'It goes without saying that all we know about organised crime is merely the tip of the iceberg' (Nota, 1992-1993: 3). The white paper continued with a reinforcement of the anxiety existing in society: 'In our judgment, the threat to the Dutch society emanating from present-day criminal organisations should be taken very seriously in view of the far-reaching economic and moral implications' (Nota, 1992-1993: 8). The paper further stated that these organisations were active in the illegal drug trade, prostitution, gambling and the arms trade, and engaged in fraud. In addition to the material and financial damage these organisations caused, there was also the danger of their gradually becoming embedded in the legitimate world, with all the corrupting influences that entailed

for Dutch society. The importance of this white paper lies in the fact that it not only advocated a tougher, more repressive approach to organised crime, but also suggested preventive measures allowing a role for society. In this respect, the white paper departed from the approach advocated in 1985, which placed the responsibility for the fight against organised crime exclusively in the hands of the police and the justice system.

The 1992 paper cited the results achieved locally in the United States through an integrated approach by the administration and the criminal justice system regarding certain forms of organised crime. It mentioned the New York State Organised Crime Task Force, which successfully tackled organised fraud and corruption in the construction industry (Nota, 1992-1993: 9).

The interest in the American preventive approach was the direct result of the initiative taken by Cyrille Fijnaut, then professor of criminology in Rotterdam and Leuven, to organise a conference attended by members of the New York State Task Force and Dutch officials and academics. Fijnaut thought the Dutch could benefit from the American experiences. He praised the Task Force's innovative recommendations, which focus on the need for preventive strategies, and suggest pro-active strategies that differ markedly from traditional reactive law enforcement approaches that have proved inadequate in fighting organised crime (Fijnaut and Jacobs, 1991: vi). There is no doubt that this conference has had a major impact on the development of Dutch strategies to combat organised crime, because, in spite of the sense of urgency, the 1992 white paper contained preventive measures as well as the reflex of tough repression.

In the policy plan, several measures concerning preventive action against organised crime were mentioned, such as enlarging the defensibility of the public administration against the threat of infiltration by criminal organisations, intensifying efforts to keep criminal organisations out of certain service and goods sectors by not granting them licences or subsidies, and cooperating with relevant professions (accountancy, notaries, lawyers) to prevent culpable involvement with organised criminals. The proposals to combat organised crime by penal methods sounded somewhat more familiar: the intensification of cooperation between public prosecutors and police officials, the formation of regional criminal investigation units, the improvement of the exchange of information between police forces and regulatory agencies (tax authorities, for example), the growth of the expertise on organised crime and the expansion of international cooperation.

The 1992 plan acquired great significance. First, it provided a basis for the preventive approach of organised crime that would come to gain recognition in the Netherlands. Secondly, the paper cleared the way for police officers and public prosecutors who were willing to fight organised crime by fire or by sword. The policy plan and the subsequent discussions in Parliament created an environment where the end – combating organised crime – seemed to justify all means and methods

in advance. Only a year after these discussions, a full-blown drama ensued. The 'IRT affair' was born.

2.4. An Unparalleled Internal Struggle within the Justice System: The 'IRT Scandal'

Even in a small country like the Netherlands, the debate on the centralisation or decentralisation of the administration of criminal justice runs through the many reorganisations of the police force and the Public Prosecutor's Office that have taken place in the past decades.

Originally the structure of both official bodies was decentralised, but there is a definite tendency towards centralisation. At the end of the 1980s, there was a growing demand for more cooperation between the locally organised police forces, in particular with a view to the fight against organised crime. From 1987 onward, several inter-regional investigation teams (Interregionale Recherche Teams, IRTs) were set up in the Netherlands. The largest one was a collaboration between three forces (Amsterdam, Utrecht, Haarlem/Schiphol Airport). It took more than two years of consultation with the relevant authorities in the police forces and the offices of the public prosecutor before this team could begin targeting criminal organisations. Notwithstanding the previous deliberations, it turned out that no clear agreements were made on which authority was responsible for the actual operations of the IRT, in this case for the deployment and the implementation of special methods of investigation. Right from the start, consultations on the supervision and the responsibility for the operations were hindered by the strained relations between the different police forces and offices of the public prosecutor.

Once the IRT got into its stride, Klaas Bruinsma, one of its main targets, was murdered. The IRT continued the fight against what was then called the 'Bruinsma heirs', a trio also known as the 'Delta group'. A small circle of intelligence officers and a public prosecutor came up with a method to gain more insight into the closed world of this Delta group. The idea was to approach a number of criminals with known contacts to the group and ask them to work as police informers. In order for these people to be valuable to the police, and to give them a chance to rise in the supposed hierarchy of the Delta group, they were allowed to engage in criminal practices. They were permitted to import large amounts of soft drugs into the Netherlands and to trade with, among others, members of the Delta group. As a result, containers full of drugs owned by these police informers were guided through customs under police protection. This was supposed to enhance the reputation of the informers in the eyes of the Delta group which could improve their status within the hierarchy. The drugs were meant to be seized by the police later on, but on many occasions that never happened. Later on, it has been established that the method of 'controlled delivery' resulted in 285 tons of cannabis entering the Netherlands, 160 tons of which were never found by the police. As a consequence

of poor regulation and poor supervision of the police informers, the method of controlled delivery boiled down to 'uncontrolled deliveries' on the drugs market. The same method of 'uncontrolled delivery' was used to ship ecstasy tablets from the Netherlands to England. It is not clear exactly how many tablets were exported under the watchful eye of the Dutch police, but a parliamentary investigation later estimated that there must have been millions. Part of the deal between the police and their informers was that the smugglers were allowed to keep the proceeds. At the end of 1993, the leaders of the Amsterdam police force found out about these operations, which were devised by officers from the other two police forces in the IRT. The Amsterdam police stated that they could not take responsibility for these poorly regulated and poorly supervised methods and cancelled the agreement with the other two forces. To the dismay of the general public and the politicians, the IRT was dissolved. The decision was announced in a press release, but in view of the secret nature of the investigation methods, no further statements were made about the motive behind the decision.

The dissolution of the IRT dominated the minds of the police and the justice system throughout the 1990s. The parties involved hurled reproaches at one another about incompetence, mismanagement and even corruption. Almost immediately after the disbandment of the IRT, the Ministers of Justice and Interior decided to use a tried and trusted method to depoliticise the issue: they appointed a commission of experts, named after its chairman Wierenga. The commission was not allowed much time for its inquiry into the causes of the dissolution of the IRT. Handicapped by this and by the opacity of the case, the Wierenga commission came to conclusions that later turned out to be wrong. Peace was not restored. On the contrary, the Wierenga commission only fuelled the crisis. The blame was placed squarely on the shoulders of Amsterdam. The commission concluded that the method used by the IRT was not illegal and that there were no indications that things had got out of hand.[6] Under turbulent circumstances Parliament involved itself in the matter and this resulted in a preliminary study by a parliamentary working group. In October 1994, the working group advised Parliament to launch a parliamentary inquiry into the methods used by the police and the Public Prosecutor's Office to investigate organised crime. The working group suggested that the dissolution of the IRT was not an isolated incident. Parliament agreed and a Parliamentary Commission of Inquiry, named after its chairman Van Traa, was set up, with the objective of bringing clarity to what was going on in the circles of the police and the public prosecutors.

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[6] For more information on the Wierenga commission, see Van de Bunt et al. (2001).

2.5. Controlling the Police

As a result of the IRT scandal, the performance by the police and the justice system faced tough public scrutiny. It almost seemed like the crime fighters posed a bigger threat to the rule of law than organised crime itself. In its report (1996), the commission published a great deal of inside information about the way the fight against organised crime had been conducted so far. First of all, the commission gave a clear insight into the nature of the crime problem, using extensive criminological research carried out by the Fijnaut research group. The threat posed by organised crime – expressed in no uncertain terms in 1992 – was now reduced to its proper proportions. There was no evidence found that criminal groups at either the national or the local level had gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions. Neither were there any indications that organised crime had penetrated the public administration or the political decision-making process. The research group nevertheless concluded that there were worrying developments in Amsterdam. Most of the real estate in the Red Light District was apparently in the hands of a number of criminal organisations and the local authorities had lost their grip of the situation.

Secondly, the Van Traa commission entered at length into the use of special methods of investigation (infiltration, observation, wire-tapping) and the manner in which judges and public prosecutors supervised the application of these methods. The commission's analysis of the fight against organised crime forms the principal part of the parliamentary inquiry. The commission concluded that there was a 'crisis'. In the period between 1990 and 1995 all parties were convinced of the need for firm action against organised crime, but there was a lack of clear and adequate guidelines. The legislator and the judiciary gave too much latitude to the police and the Public Prosecutor's Office, who did not know exactly what to do, as the report states (Enquêtecommissie Opsporingsmethoden, 1995-1996: 414).

The commission also criticised the large number of separate organisations and collaborating bodies within the police, the justice system and the public administration, all playing their part in the fight against organised crime. There was too much professional jealousy and not enough exchange of knowledge and information. Finally, the commission condemned the breakdown of authority in the police forces and the offices of the public prosecutor, referring in particular to the lack of clear guidance from public prosecutors in criminal investigations. Too many decisions were left to the discretion of individual police officers; the obscure method of the 'uncontrolled delivery' became one of the most talked-about examples of this state of affairs (Enquêtecommissie Opsporingsmethoden, 1995-1996). The IRT scandal resulted in major changes in Dutch law. A few years ago several special investigative powers were regulated by law and more adequate supervision of these powers was established (see also section 3, infra).

As a result of the involvement of Parliament in the 1990s, more information came to light about police operating procedures, the supervision by the public prosecutors and the criminals involved in the IRT scandal as either informers or targets. Unintentionally, secret information was also revealed, including the identity of several police informers. One of them demanded money from the Minister of Justice to seek refuge abroad. He received € 800,000 in compensation, but instead of fleeing the country, he bought a villa in the Netherlands. This anecdote illustrates the distinct possibility that the police and the justice system had been taken for a ride. Who was running whom? Did the police get information about the criminal world through the informers, or did the criminals use these same informers to gain insight into police operations?

Three years later, in 1999, another parliamentary commission made a name for itself by claiming – on the basis of interviews with several intelligence officers and a public prosecutor – that in the period 1992-1993 not only soft drugs and ecstasy, but also 15,000 kilos of cocaine (representing a street value of € 500 million) had been imported and sold under the protection of the IRT. The commission added that such large amounts of cocaine could not have been smuggled into the country without corrupt intelligence officers. Between 1996 and 2001 an extensive criminal investigation was conducted into possible corrupt actions by a few investigators who had been involved – as was evident from the parliamentary inquiry – in the 'uncontrolled deliveries'. Because this method of investigation never yielded any relevant information but had been very profitable to certain informers, it seemed that the officers involved were corrupt and perhaps benefited financially from the 'uncontrolled deliveries'. After years of investigation by a large investigative team, no indications have come to light that the police officers involved were indeed corrupt. They probably only acted clumsily, but they most certainly did not adequately justify their actions to their superiors and to the public prosecutors. It also appeared from the criminal investigation that there was no proof whatsoever for the statement made in 1999 by the parliamentary commission that 15,000 kilos of cocaine were imported through the 'uncontrolled deliveries'.[7]

[7] Its results were so disappointing to many that they doubted whether the investigation was carried out properly. Together with Cyrille Fijnaut and the criminologist Hans Nelen, the author conducted an evaluation study into the course of this criminal investigation. Van de Bunt et al. (2001) concluded that the investigation may have been hampered by bureaucratic tensions and conflicts, but that the possibility of corruption was nonetheless investigated in a serious manner.

2.6. Towards a Safer Society (from 1996 to the Present)

It was to be expected that the storm died down after all the excitement about organised crime and the fight against it. At the end of the 1990s new crime problems, such as 'senseless violence' in the streets, incivilities, domestic violence and feelings of insecurity, demanded the attention of the media, the politicians and the administration of criminal justice. Citizens' feelings of insecurity have become an issue in the political debate. To the extent that these feelings are related to actual crimes, they are affected by street crime rather than organised crime. The most recent white paper from the Dutch government on crime prevention *Towards a Safer Society* (*Naar een veiliger samenleving*) pays little attention to organised crime, let alone to more specific themes like money laundering or contract killings.

These days attention is focused on visible forms of crime, such as street violence, and forms of behaviour that are not so much 'illegal' as 'asocial' – loitering, begging and traffic offences.[8]

The fact that the public debate has calmed down cannot just be explained by other forms of crime demanding attention. Peace has returned to the Netherlands regarding the threat of organised crime. Unfounded fear gave way to conceptions of the nature of organised crime based on facts. Police officers and politicians no longer equate organised crime in the Netherlands with the mafia. There is now talk of 'networks' and 'fluid social groups', which at least sound less threatening than 'mafia'. Ideas about the criminal penetration of legitimate sectors gave way to the concept of 'symbiosis', again less threatening than 'penetration'. We also have to bear in mind that the problem of organised crime in the Netherlands is unlike that in some other European countries. For example, the Netherlands is not faced with the pressing problem of terrorism that monopolised the debate on organised crime in Spain, and it does not suffer from the intertwining between organised crime, the economic sectors and the political institutions, as is the case in Italy. Extortion, political corruption, and kidnapping connected with organised crime rarely happen in the Netherlands, if at all. Many forms of organised crime in the Netherlands boil down to international smuggling activities. Hence, the nature of organised crime in the Netherlands might be described as 'transit crime'. Incidents such as the discovery of a large weapons cache, or the liquidation of well-known criminals in the streets, still draw the attention of the public and the politicians, but there is no

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[8] Recently, the Dutch newspaper *Trouw* conducted a public opinion poll on the police and on public safety. A small majority agreed with the statement: 'it is more important that the justice system deals with violence and burglary than with drug bosses'. In an earlier poll, conducted in 1998, only 30 per cent of those questioned agreed with this statement. These data illustrate the decline in public fear about the problem of organised crime (*Trouw*, 14 January 2004).

longer any serious public anxiety in the Netherlands about the threat of organised crime, despite the fact that the police have not been able to solve any of the cases of the murdered criminal figures and are still in the dark about what is behind the weapons caches.

The police and the justice system seem somewhat tired of the traditional nucleus of the Dutch organised crime problem, which is the trafficking of illegal drugs. A white paper on the administration of criminal justice states that police attention should be focused 'to a substantial degree' on other forms of organised crime rather than on drugs trafficking. Reference is made to the trade in chemical waste, medicines, blood or organs, and endangered species (Ministerie van Justitie et al., 2001:34). But these new priorities do not seem very realistic, since there is hardly any known involvement from organised crime in these areas. Furthermore, it remains to be seen whether or not the Netherlands has a lot of choice when listing its priorities. The transnational character of its organised crime problem calls for a certain amount of modesty in this respect. In the past years, foreign pressure and criticism have kept organised crime on the Dutch political agenda. The United States in particular has criticised the Netherlands for not doing enough to investigate and prosecute criminal organisations involved in the production and international trade of ecstasy. As a result of this kind of criticism, an additional € 20 million is spent annually on investigating this form of organised crime in the Netherlands. Many Dutch citizens consider these foreign comments an exaggeration of the situation and they view them as an uncalled-for criticism of the liberal Dutch drugs policies. The public's interest in the subject of organised crime has subsided. After all the excitement in the 1990s, the pendulum has now swung back.

3. Crime Policies: Theory and Practice

In contrast to the fluctuation in public attitudes, institutional attention to organised crime has been relatively consistent from the early 1990s to the present. Two different tacks have been taken. First of all, the Netherlands invested considerable effort in the prevention of organised crime, or more specifically, in measures not pertaining to criminal law. The innovative aspect of this approach lies in the fact that it is not primarily aimed at the perpetrators of organised crime, but rather at the various circumstances which facilitate organised crime. The second track followed the criminal approach, referred to here as 'repression'. Over the past 15 years, the repressive approach, aimed at catching the criminals, has seen some major developments. The most important changes in these two areas are described in the following.

3.1. Prevention

3.1.1. Anti-Money Laundering Efforts

The anti-money laundering effort is one of the cornerstones of the fight against organised crime in the Netherlands. Money laundering was a non-issue until the end of the 1980s. It was associated with the 'black money' that ordinary citizens and companies tried to hide from the view of the tax authorities. It was not until the early 1990s that in the national political debate the connection was made between money laundering and the fight against organised crime. This came about as a result of international discussions on the laundering of the proceeds of drug-related crimes, and not because the problem of the laundering and reinvestment of proceeds of crime had actually manifested itself in the Netherlands. The introduction in the Netherlands of anti-money laundering legislation was a direct consequence of the 1991 European Economic Community (EEC) Directive on the Prevention of the Abuse of the Financial System (Van de Bunt and Van der Schoot, 2003: 18).[9] Since the introduction of the MOT Act (Act on the Disclosure of Unusual Transactions – Wet Melding Ongebruikelijke Transacties) in 1994, financial institutions such as banks, exchange offices, casinos and credit card companies are obliged by law to report unusual financial transactions to a Financial Intelligence Unit (Meldpunt Ongebruikelijke Transacties).[10] The police and public prosecutors have no direct access to the database of this unit, to ensure the privacy of legal and natural persons whose financial transactions have been reported as unusual. It is up to the officials of the unit to decide whether or not to transmit the reported transactions to the police and to a police unit called BLOM (Bureau Landelijk Officier van Justitie Meldingen Ongebruikelijke Transacties – Public Prosecutor's Office for Anti-Money Laundering).

The purpose of the MOT Act is twofold: the prevention of the abuse of the financial system by laundering criminal funds, and the repression of money laundering itself. The emphasis is therefore not on combating organised crime, but in the political climate described in section 2 it was obvious to anyone that this sort of legislation was primarily intended to counteract money laundering by organised crime. Because of the perceived threat posed by organised crime and because there was already the anti-money laundering Directive, the government managed to pass the bill through Parliament in a relatively short time. There was considerable opposition at first, especially voiced by the banks. They took the

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[9] For a history of the Dutch law, see Mul (1999).

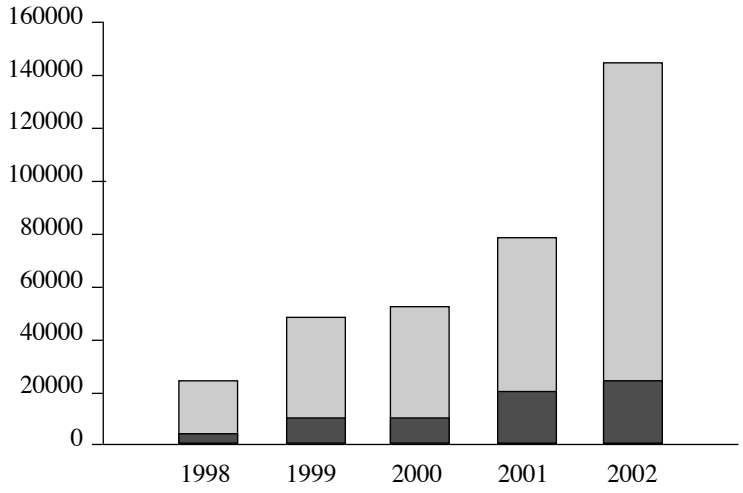
[10] At the same time, the Act on Customer Identification for Financial Services was introduced, which obliges financial institutions to ask customers for identification. All records of financial transactions must be stored for five years.

view that the government was trying to burden them with a supervisory task not suitable for a commercial enterprise. It was also pointed out that banks would run the risk of damage claims from customers disagreeing with the disclosure of their financial transactions. For this reason a legal stipulation was added protecting financial institutions from civil suits resulting from unjust reports to the Financial Intelligence Unit.

Whereas the EEC Directive was limited to organised drug-related crimes, the Dutch legislator took a general approach to money laundering. The Act targets all financial transactions, irrespective of the nature of the crimes connected with it, and opted for mandatory reporting of unusual financial transactions. Objective as well as subjective indicators were developed to determine the unusual nature of a transaction.

3.1.2. Reports of Unusual and Suspicious Transactions

Over the past ten years, hundreds of thousands of unusual transactions were reported to the Financial Intelligence Unit. The year 2002 in particular saw a marked increase, largely attributable to the growing number of reports of money transfers. The number of reports to the police of suspicious transactions also shows an upward trend:



Source: Financial Intelligence Unit, Annual Report 2003.

It appears from information provided by the unit that the use of objective and subjective indicators in determining the unusual nature of transactions varies with the type

of financial service provider. The vast majority of reports by exchange offices turn out to be based on an objective indicator (for instance, the amount changed is in excess of € 10,000), while almost 70 per cent of all reports by banks are based on the subjective assessment that the client's behaviour and/or the type of transaction was 'unusual' or, that a large amount was probably divided up into smaller amounts to stay within the € 10,000 limit. From this relatively high percentage of subjective decisions it can be deduced that banks no longer report all transactions that should have been reported, based on the implementation of objective indicators. In actual practice, the duty to report has evolved into the right or the possibility to report and this is recognised in the most recent annual report of the unit, which concludes that a system has developed in which the detection of unusual transactions is left to the discretion of the banks themselves (Meldpunt, 2003: 14). This is in anticipation of a development supported by the government to prevent over-reporting based on objective criteria only. In a recent white paper on *The Integrity of the Financial Sector and the Fight against Terrorism* the government announced that in future the emphasis should be on a risk-based rather than a rule-based system of reporting (Tweede Kamer, 2001-2002: 46).

3.1.3. Effectiveness of the MOT Act

The Financial Intelligence Unit decides whether or not to transmit unusual transactions as suspicious transactions to the police and to the BLOM, the police unit in charge of the database of suspicious transactions. Officials of the unit make their assessments by matching the names of legal and natural persons against the names of persons on whom there is intelligence information available, or who are currently under police investigation. They also use their own research and experience to look for suspicious patterns in the lists of transactions.[11] It is striking that over the past ten years much effort has been devoted to the drawing up of criteria for unusual transactions, while far less attention was paid to the question how the unit decides which transactions should be transmitted as suspicious to the BLOM.

What are the effects of this system of mandatory reporting, or to be more specific, how many suspicious transactions are used in criminal investigations or actually lead to the launch of an investigation? Two researchers from the WODC published an empirical study in 1996. They concluded that in 1995 approximately 2500 suspicious transactions were reported to the police (around 14 per cent of the total number of unusual transactions). Of these 2500 around 20 per cent were used, i.e. added to 45 ongoing criminal investigations. Only rarely did the information

[11] The unit developed a programme for the analysis of networks, resulting in 2001 in the uncovering of a criminal collaboration, based on 1100 money transfers (Meldpunt, 2001: 31).

lead to the launch of an investigation by the police (Terlouw and Aron, 1996: 97). Since 1999, the BLOM has carried out random checks to find out if suspicious transactions are used in police investigations. Of over 1900 cases, 15 per cent were used by the police to strengthen evidence and 14 per cent were used as 'guiding information', which played a role in establishing priorities or a shift of focus in ongoing criminal investigations (BLOM, 2000).

The MOT Act system allows transactions to take place even when the financial service providers regard them to be 'unusual'. In 2002, almost all of the 24,741 suspicious transactions were actually executed, only 145 were not (Meldpunt, 2003: 7). What this means is that financial service providers can execute transactions without reserve, even when they are convinced they are collaborating in money laundering. Disclosure to the Financial Intelligence Unit serves to exculpate them in this respect. If it turns out that the feedback from the justice system is inadequate, the Act unintentionally assists in the laundering of criminal funds under the watchful eye of the financial service providers, and contributes towards the 'uncontrolled delivery' of the proceeds of crime.

Recently, a new extensive MOT Act evaluation study was carried out, in particular into the services involved in the MOT Act chain. It concluded that all those concerned seemed to have lost sight of the original purpose, namely the prevention and detection of criminal offences, with a view to protecting the integrity of the financial sector. The researchers concluded that after several years the interests of the reporting bodies have come to dominate the project. Many transactions are dutifully reported and the unit keeps track of the numbers, but it is unclear how all this relates to the integrity of the financial sector or the fight against money laundering. According to the researchers, the unit draws few lessons from the mass of information, and the preventive intentions of the Act (identifying patterns of money laundering, giving advice and making recommendations) do not live up to their promise (Faber and Van Nunen, 2004: ch. 5).

3.1.4. Recent MOT Act Developments

At the end of 2001, a separate penalty provision for money laundering offences was created. Until then, money laundering was regarded as a form of receiving stolen goods, but since this implied profiting from someone else's crimes, there was no possibility to prosecute criminals for laundering the proceeds of their own crimes. In 2002, charges were brought for money laundering on 107 occasions, in many cases against persons found in possession of large sums of money from unknown sources (Faber and Van Nunen, 2004: ch. 5).

Since the terrorist attacks in 2001, the financing of terrorism has taken on a new urgency. The strong focus on the fight against terrorism has revitalised the efforts put into controlling the integrity of the financial sector. In 2002, the white paper on *The Integrity of the Financial Sector and the Fight against Terrorism* was

published (Tweede Kamer, 2001-2002). It stated in so many words that the fight against money laundering must be intensified in light of the terrorist threat. Building on an EEC directive on money laundering, one of its intentions was to extend the system of mandatory reporting to such occupational groups as accountants, notaries, real estate agents and tax consultants.[12] Despite heavy criticism from lawyers and notaries, the favourable momentum allowed the government to issue a decree in 2003, which made a number of services by notaries, lawyers, accountants and real estate agents subject to powers of the MOT Act. According to this decree mandatory reporting should only apply to giving advice or the provision of assistance by, *inter alia*, lawyers and notaries for sale and purchase of property or companies, and the administration of cash, securities, and so on.[13]

Other ways to improve the effectiveness of the MOT Act were also suggested, such as by simplifying and speeding up procedures and methods. However, the forthcoming evaluation study mentioned above indicates that the relevant parties are pessimistic about the net result of these points of action in regard to the fight against terrorism. They all emphasise the mainly symbolic value of these plans and argue that too much is expected from the system of mandatory reporting when it comes to terrorism (Faber and Van Nunen, 2004).

3.1.5. The Preventive Approach Takes Root

The MOT Act is just one of many examples of preventive measures against organised crime and it is clear that the prevention of organised crime is becoming increasingly accepted in the Netherlands. The preventive approach is characterised by the fact that it is not primarily aimed at the perpetrators of organised crime, but rather at the various circumstances that facilitate organised crime. The preventive approach addresses governments, civilians and enterprises and it attempts to make them feel responsible for reducing the opportunities for organised crime.

It was noted in section 2 that the minds of policy-makers in the Netherlands were greatly influenced by a conference with members of the New York State Organised Crime Task Force, organised by Fijnaut in 1990. The Dutch emphasis on prevention was later taken on board by the European Union. Major European milestones showing the influence of Dutch policies were the Treaty of Amsterdam, which stressed the importance of preventing crime (organised or otherwise) and the

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[12] Directive 2001/97/EG of the European Parliament and European Council, *Official Journal*, L344/7.

[13] In June 2003, by governmental decree, a number of services by notaries, lawyers, auditors and real estate agents have been subject to powers of the MOT Act. See Lankhorst and Nelen (2003) for more details.

Action Plan to Combat Organised Crime (1997).[14] This plan stated that 'prevention is no less important than repression in any integrated approach to organised crime, to the extent that it aims at reducing the circumstances in which organised crime can operate'. It also formulated a number of recommendations to make the preventive approach more specific: developing an anti-corruption policy within the public administration, making it possible to exclude persons convicted of offences relating to organised crime from tendering procedures, and introducing measures for the improved protection of certain vulnerable branches and professions.

In the last ten years, a large number of measures with regard to the prevention of organised crime were taken in the Netherlands (Van de Bunt and Van der Schoot, 2003). On the one hand, these measures aimed to improve the integrity and upgrade the instruments of public administration, in order to prevent its penetration by organised crime. On the other hand, legislation has focused on commercial enterprises and professions, with instructions to conduct transactions with greater diligence and to report any unusual transactions.

In order to improve the integrity of its public administration, the Netherlands has worked on tightening up its corruption laws and increasing the maximum penalties.[15] Within many areas of the civil service, codes of conduct were introduced and organisational arrangements were made to ensure better supervision of civil servants in vulnerable positions.[16] In many areas of *business*, it has become common practice that corporations and even individuals are required to engage in the systematic 'surveillance' of normal business activities in order to detect and report signs of illegal activity or suspicious transactions. To avoid illegal migration, for example, Royal Dutch Airlines (KLM) has stepped up its efforts to ensure that travellers have the proper documentation. In such cases, a system of fines imposed upon the carriers has provided a strong stimulus. In the chemical industry, companies and traders are required to report suspicious transactions involving approximately 25 chemical products that can be used for the production of illegal narcotics.[17]

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[14] This aspect was once again emphasised in the European Council Summit of Tampere in 1999. See the *Presidency Conclusions Tampere European Council of 15-16 October 1999*, points 41-2.

[15] These changes took effect in 2001. See Hartmann (2001: 31-50).

[16] Civil servants applying for 'sensitive' positions are better screened and job rotation is stimulated in order to prevent civil servants from getting too deeply involved in certain tasks or situations.

[17] *The Coordinated Struggle against Ecstasy* (*Samenspannen tegen XTC*), *Handelingen II* 2000/2001, 23 760, no. 14, 10-11.

In Rotterdam, a platform for crime control was established with the purpose of reducing the crime risks in the port and the risks for businesses unwittingly involved in illegal activities. Participants are the relevant businesses in the harbour and state agencies, such as the police, customs, public prosecutor's office and various municipal agencies. Together they aim to increase the awareness of all parties in the main port and their activities are not limited to merely offering vague advice.[18] In 2000, a guidebook was produced entitled *Security Main Port Rotterdam* (Regionaal Platform Criminaliteitsbeheersing Rotterdam, 2000). The guide examines security management in general and the risks in business processes, personnel management, finances, information technology and computerisation, company grounds and premises in particular.

From the mid-1990s onwards, occupational groups, such as lawyers and notaries, started developing their own internal guidelines on how to avoid culpable involvement with criminal organisations. The guidelines for the legal profession drawn up in 1995 require lawyers to check the identity of clients with unusual requests. When a lawyer has doubts about the integrity and the intentions of a client, he is supposed to find out more by questioning him, which may result in the termination of their relationship. This does not apply to clients seeking legal aid relating to a trial, but only to clients who ask lawyers for advice on, for instance, legal entities which seem to serve no other purpose than to mislead the tax department or the public prosecutor (Lankhorst and Nelen, 2003: ch. 7). It is not clear to what extent these guidelines are being observed. In the last few years, only a handful of violations of the guidelines came to the attention of a disciplinary tribunal (Spronken, 2001: 627).

3.1.6. The Case of Amsterdam

One section of the report by the parliamentary inquiry commission pertained to the organised crime situation in Amsterdam. The research for this part of the inquiry was carried out by Cyrille Fijnaut and Frank Bovenkerk. The results of their study sent shock waves through Amsterdam. On the basis of conversations with well-informed police officers, Fijnaut and Bovenkerk concluded that 16 criminal organisations had been able to build up positions of economic power in real estate, bars and restaurants, especially in the famous Red Light District in the city centre. The report stated that the indecisiveness of the local authorities had created a fertile breeding ground for illegal and criminal activities in the district (Fijnaut et al., 1998: 138). In response to this, the city administration set up a special preventive programme to combat organised crime. As a result of this programme, action was taken on several fronts regarding, first, the integrity of the civil service apparatus; secondly, the screening

[18] The complete guide as well as other information can be found at <http://www.portofrotterdam.com>.

processes in the framework of public tender procedures; and thirdly, the infiltration of organised crime in certain areas and branches of industry in the city.[19]

First, a project was set up aimed at creating awareness amongst executives and civil servants on the nature, scope and development of corruption and fraud, and to update them on better ways to master these issues. The most important principle that arose was that an awareness of the risks of criminality should be institutionalised in the entire bureaucratic and political organisation of Amsterdam. This meant that in every service or branch concrete action had to be taken (vulnerability analysis; detecting opportunities for corruption and fraud). In addition, a special Integrity Bureau was set up, which was made responsible for the further implementation of prevention policies and the investigation of suspected cases of fraud or corruption. In 1996, a municipal directive was issued, making it mandatory for civil servants to report suspicions of fraud and corruption among colleagues to the Bureau.

This directive was later widened to include conflicts of interest, physical violence and intimidation, deviant behaviour off duty, and misuse of authority. This broad definition of offences illustrates that the integrity policy has drifted away from its original goal, namely to stem the tide of organised crime. A recent evaluation study indicates that between 1996 and 2002, a total of 286 cases were reported, many of them concerned with suspicions of employee fraud and employee theft (129) and a lesser number with corruption (33 reports) (Nelen, 2003). The study concludes that the number of reports may have gone up, but that it is impossible to determine the meaning of this increase. Is this an increase in irregular behaviour, in awareness or in the willingness to report a colleague?

Secondly, screening and security procedures were enacted to prevent companies with criminal connections from participating in public tendering procedures. Screening is conducted by a special agency, the Screening and Audit Bureau (SBA), under the direct authority of the mayor. To carry out its tasks properly, this agency not only uses its own expert analysts but also cooperates closely with the police, the Public Prosecution Service, the fiscal authorities and the municipal services. An evaluation study published in 2001 revealed that 20 per cent of the approximately 100 screenings that were carried out resulted in the exclusion of one or more companies from the public tender process. In the majority of cases companies were excluded because of insufficient information or a lack of financial guarantees. Some cases involved companies that were probably financed with criminal money (Van der Wielen, 2001: 63-78).

Thirdly, a project was set up to keep organised crime away from certain regional areas and economic branches of the city. Initially, this project focused on the notorious Red Light District, but after three years of operating successfully, the project expanded to other areas and branches in the city. Some examples of the

[19] For an overview, see Fijnaut (2002).

selected areas are run-down streets in poor areas with a high number of immigrants; the most expensive shopping street in the city; and the industrial harbour district. Some examples of the selected branches are the so-called smart shops that may participate in drug trafficking, phone centres that may be used for illegal money transfers, and the escort business that may be used for the exploitation of trafficked women. Basically, the project team follows a two-step approach. The first step is the collection and analysis of data on the selected areas or branches. The team is given access to all the relevant information from the local authorities on the housing situation and the use of the real estate in the selected areas and branches. By linking this information to open sources, such as the municipal register and the land registry, the team should be able to map out which legal and natural persons are the owners of the real estate and the local businesses. The project team is then given special authority by the Minister of Justice to collect data from the police, the public prosecutor and in some cases the fiscal authorities. Through the combination of this information with data from the municipal authorities, an assessment can be made of the involvement of criminals in the selected area. The second step is to take measures on the basis of this assessment. Besides criminal investigations and fiscal claims, administrative measures can be taken such as the refusal or withdrawal of permits and the closure of certain establishments, for instance when a bar plays a role in drug trafficking. Finally, the project team also takes civil measures, such as purchasing real estate to prevent it from falling into the hands of criminal organisations.

The project in Amsterdam is an example of a multi-agency approach in which several agencies cooperate by sharing information and integral enforcement. Although an evaluation is still in progress, the project in Amsterdam is considered a success by those involved. It has created awareness of the threats of organised crime within the civil service, the city and neighbourhood councils, and it has produced results in preventing organised crime infiltrating certain businesses.

3.1.7. The BIBOB Act

Following the example of Italy and New York, the Netherlands has also developed an administrative approach to organised crime. A draft bill was passed by Parliament and implemented mid-2003. The new BIBOB Act (Bevordering Integriteitsbeoordelingen door het Openbaar Bestuur – Ensuring Integrity of Decisions by the Public Administration) creates a legal basis to refuse or withdraw permits, licences, grants and subsidies when there is a serious threat of abuse by criminals.[20]

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[20] The scope of the BIBOB screening system is limited to certain branches of industry which are considered to be vulnerable to organised crime: hotels and restaurants, the sex industry, the construction industry, waste processing, public housing and transport.

It must be noted that the original purpose of the law was to prevent organised crime from infiltrating legitimate sectors, but the text of the law leaves room for broader measures. The act aims to avert the danger of subsidies or licences being used to spend the proceeds of crime, or that subsidies or licences are used to commit a punishable offence (for example, a transport company is established with the purpose of moving drugs). Permits and subsidies will be refused if punishable offences (such as corruption) are committed during the application procedure. All decisions must be based on a screening process and risk assessment of the integrity of the applicant, which is not conducted by the governmental body itself, but by a special agency, the BIBOB Bureau, which is located at the Department of Justice in The Hague. This body also screens participants in public tender procedures for the application of the grounds for exclusion in European Union Directives.

The purpose of this bureau is to support local public authorities, such as city administrations, municipalities and provinces, in enforcing the law. The bureau has the authority to consult criminal and tax records as well as police intelligence on organised crime. On the basis of the administrative and financial information, the bureau provides the requesting authority with written advice, in which it indicates the seriousness of the threat of abuse. The requesting authority remains responsible and may disregard the advice of the BIBOB. When an application is denied, the public authority itself must explain its reasons for doing so to the applicant.

The BIBOB Act has been widely discussed in the Netherlands, both inside and outside of Parliament. Attention was drawn to the discriminatory nature of the act and the stigmatising effects of singling out specific branches for screening. The issue of false positives and negatives was also raised. Dubious applicants would be able to learn from earlier negative experiences and use 'straw men' or complex legal entities to assume an appearance of honesty.

Conversely, applicants with prior convictions, but with honourable intentions, would run the risk of being unfairly excluded. The government countered the criticism by pointing out that the BIBOB Bureau would have access to a wide range of databases, thus ensuring effective and well-founded advice.[21]

Six months after the BIBOB Act came into force, it is too early to judge its effectiveness. The governmental bodies involved seem reticent, and the number of requests for advice is still low.[22] The main objection that can be raised to the BIBOB Act is that it is not precisely tailored to organised crime in the Netherlands. While the New York mob tried to acquire positions of power in legal markets, the core business of criminal organisations in the Netherlands lies within illegal markets.

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[21] For an overview of the debate, see Heddeghem (2002).

[22] In a discussion with the author in December 2003 a BIBOB officer said that since the Act came into force, only three requests for advice had been submitted.

This type of crime – mostly transit crime – tends to move about. The perpetrators are not interested in establishing themselves in the legal world to dominate a legal market. Of course, organised crime in the Netherlands will indeed acquire property and buy itself into companies, if only to invest the proceeds of crime. In this sense, the BIBOB approach could have some value, but given the nature of criminal organisations in the Netherlands, we should not expect too much of the BIBOB Act as an instrument to contain organised crime.

3.2. Repression

In addition to the attention given to preventive measures, the police and the justice system have obviously devoted much of their attention to repression, i.e. criminal investigations with a view to prosecute organised criminals and see them sentenced. During the 1990s, there were two important developments in the repressive approach. First, an attempt was made to better tackle the problem through a financial approach. The second track was aimed at expanding and regulating special methods of investigation.

3.2.1. The Financial Approach

Until well into the 1980s, the existing legal possibilities to seize the proceeds of crime were rarely used. The authorities were focused on convicting the perpetrators and seemed blind to the financial aspects of criminal cases. All this changed in the mid-1980s. The argument for criminal prosecution 'with an eye on the money' was increasingly voiced (Keyser-Ringnalda, 1994: 128). At the time, this heightened awareness among police officers and public prosecutors was certainly not unique to the Netherlands. There was a growing interest around the world in retrieving and seizing the proceeds of crime, especially when they were linked to drug trafficking. The Treaty of Vienna (1988), drawn up under the auspices of the United Nations, stipulated that international cooperation should be improved, in order to advance the confiscation of the proceeds of drug crimes (Keyser-Ringnalda, 1994: 167-8).

In the Netherlands, the forfeiture of the direct proceeds of criminal offences and working capital used for the committing of crimes was already a legal option. There was also a sanction in Dutch law aimed at the confiscation of the proceeds of crime. In 1993, this sanction was enlarged to include new applications. Before this change was effected, proceeds of crime could only be confiscated if a direct link was proven between the proceeds and the offence for which the defendant was convicted. Since 1993, proceeds can be confiscated from offences *similar* to the offence for which the defendant is convicted or other serious offences. It is however required that there are sufficient indications that the convicted person has indeed committed these crimes. The burden of proof is even lower if a convicted person

has considerable assets but no regular income: if he cannot make a reasonable case for the legitimate origin of his capital, it can be confiscated.

The 1993 Act also enlarged the possibilities for tracing the profits of crime. In cases of serious offences, a special financial investigation can be launched. Police and judicial authorities now have special powers to investigate the financial aspects of crime. Police officers can coerce people with financial relations to the person under investigation to give information about his financial affairs. Within the framework of a financial investigation, regular powers of investigation, such as a house search and the seizure of goods, can also be brought into action. The financial investigation can even continue after the conviction of the person under investigation, but it must be completed within two years of him or her being found guilty. The new Act was severely criticised for all these far-reaching elements, but the Minister of Justice succeeded in gaining a parliamentary majority. As mentioned earlier, this was not the time to raise critical questions as far as dealing with organised crime was concerned. Besides, the Minister played his trump card: he suggested that the benefits of broadening the law (which would entail investing in the police force and the justice system) would soon outweigh the costs, since the confiscated funds would flood back into the treasury.[23]

Two evaluation studies (1998 and 2002) have assessed the effectiveness of the proceeds-of-crime approach in the 1990s (Nelen and Sabee, 1998; Faber and Van Nunen, 2002). Both indicated that the 1993 Act has not delivered on its promises, at least not yet. Between 1996 and 2001, public prosecutors have tried to use the Act to confiscate proceeds of crime in approximately 9,000 cases, according to a detailed study by Faber and Van Nunen (2004). Forty per cent of these cases were drug-related, and 30 per cent concerned theft. In the majority of these cases the amounts of money involved were relatively low. In 84 per cent of the cases the estimated amount of illegally obtained income did not exceed € 45,000. Only in 2 per cent of the cases the estimated level of criminal profits exceeded € 450,000 (Faber et al., 2002: 461-72). A large number of cases were settled out of court or are still waiting for a final ruling. Judges ruled on approximately 5,500 cases between 1995 and 2000. The sum total of the monies that were actually deprived during the period 1995-2001 amounted to no more than € 27 million. Another striking result is the huge gap between the values of the deprivation orders passed by the courts (€ 129 million) and the execution of these deprivation orders (€ 9 million) (Faber et al., 2002).

It appears from both evaluation studies that the application of the new legal possibilities has been frustrated by a severe lack of knowledge within the police and the public prosecution department about financial matters, civil law, banking regulations, and other relevant non-penal laws and practices (Nelen, 2000). But there is a normative as well as a cognitive aspect to the problem: judges still seem

[23] For a detailed analysis of the debate, see Nelen (2000: 51-5).

rather ambivalent towards the legislation as a whole, mostly because of certain unclear provisions and the far-reaching elements of the law.[24] The majority of police officers, in their turn, do not regard the deprivation of assets as an important and rewarding element of their job. The proceeds-of-crime approach is primarily regarded as an activity that is complex, not very exciting and, above all, generates poor results. The concept of financial policing is not in line with their perceptions of what real policing should be about. The confiscation of illegally obtained assets is still considered a fairly low priority among the list of daily tasks (Nelen and Sabee, 1998; Faber and Van Nunen, 2002).

The question arises as to whether the broadening of the legislation in 1993 was really necessary. A remarkable finding in the study by Nelen and Sabee (1998) tells us that between 1993 and 1998 the police officers and judicial authorities, who had claimed these new statutory powers, relied almost entirely on the 'old' legal instruments in deprivation procedures. The proceeds-of-crime approach aimed at demonstrating the power of the judicial authorities in their struggle against organised crime. The results of the evaluation studies show quite the opposite: instead of its strength, the proceeds-of crime-approach has revealed the weakness of the state in its efforts to counteract organised crime (Nelen, 2003: 127-36). These results are not unique to the Netherlands. Studies from abroad also underline the difficulties in actually depriving criminals of their assets.[25]

3.2.2. The Special Powers of Investigation Act (BOB Act 2000)

In the 1990s, especially after the IRT scandal, in-depth discussions were held in the Netherlands on the acceptability and the standardisation of special methods of investigation in the fight against organised crime. As a result of the analysis made by the Van Traa parliamentary inquiry commission a bill was drafted, which became the Special Powers of Investigation Act (BOB Act – Wet Bijzondere Opsporingsbevoegdheden), with the purpose of regulating special investigative methods and improving the administration of police investigations.[26]

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[24] Nelen and Sabee (1998). The judges criticised in particular the vague definition of 'proceeds of crime'.

[25] For an overview of the situation in the United Kingdom, see Levi et al. (1995); for the German experience, see Gradowski and Siegler (1997).

[26] The Supreme Court of the Netherlands was another stimulating factor. Two months before the publication of the final report of the Van Traa commission in 1996, the Supreme Court ruled that unlawful actions during a criminal investigation could lead to the inadmissibility of a case (HR 19-12-1995, NJ 1996, 249). While the Van Traa commission focused on the integrity of the police force and the public prosecutors, the judges emphasised the importance of the legal standardisation of methods of investigation, with a view to protecting the basic civil rights of citizens.

Responding to the situation in the early 1990s, when investigative methods without a statutory basis were developed on the shop floor, the new Act is based on the premise that particularly those methods of investigation that could seriously affect the integrity of the investigation or the ability to monitor it, or could infringe on civil rights, should have a statutory basis. This is why the new Act does not contain a systematic description of all methods, but focuses instead on a number of 'special' investigative methods. A recurring theme is the need to monitor the decision-making process to apply a certain method, as well as the actual implementation. The Act confirms that the public prosecutor is the appropriate official in leading police investigations and that special powers of investigation can only be used after the public prosecutor has issued a warrant. The judicial authorities must be open with the person under investigation. This means that the public prosecutor must inform the person who is the subject of the special investigation as soon as the interests of the investigation allow for it, as a safeguard against the secret use of special investigative methods, particularly if the investigation preliminary to prosecution does not lead to a criminal trial. The Act greatly values accountability to both the judiciary and the defence regarding the use of special investigative methods. This is why the Act requires proper recording of all the steps that were taken when special methods were used during the investigation.

The Act provides for three undercover powers: covert investigation (infiltration), pseudo-purchase/services, and systematically obtaining intelligence about suspects through undercover investigation. Infiltration is defined as participating with a group of people believed to have committed crimes or to be planning crimes. Contrary to existing practices, the Act states that civilians can only act as infiltrators under exceptional circumstances.[27] As a result of the experiences with criminal police informers that were at the heart of the IRT scandal, it is expressly stated that criminals may not be deployed as civilian infiltrators. The Act assigns a special status to pseudo-purchase/services, because this method can also be used without it being part of an infiltration. The Act confirms existing case law and directives by the Public Prosecutor's Office in stating that pseudo-purchase/services is only permitted if the person under investigation is not entrapped by the investigative method; his 'original' intent must be on the transaction. Systematically gathering intelligence entails undercover activities such as frequenting the suspect's haunts, without it being apparent that the investigator is a police officer. This special investigative power is bound by fewer conditions than infiltration, because the

[27] For example, if the public prosecutor finds that infiltration (covert investigation) by a police officer is impossible, he can deploy a civilian infiltrator. A written agreement must be drafted containing the reward and possible indemnification. The same applies to the involvement of civilians in pseudo-purchase/services.

investigating officer is not committing punishable acts, and is not exposed to as much risk as an infiltrator.

The new Act has also defined powers that were not exercised in practice before. A striking example is the recording of conversations behind closed doors. Recording confidential communications in a private residence is now permitted under strict conditions.[28] Another major diversion from existing practices is that the Act prohibits harmful or dangerous substances or goods from entering the market. If an investigative officer is aware of the location of prohibited objects through using one of the special investigative powers, he or she is obliged to seize these objects. In other words, the Act puts a stop to the police strategy of controlled delivery. However, it allows for an exception: the public prosecutor can decide not to seize the objects if a serious investigative interest is at stake.[29]

In 2002, the WODC evaluated the first experiences of police officers and justice authorities (Bokhorst et al., 2002). Their exploratory research was based on a total of 45 interviews, mainly with police officers and public prosecutors.[30] The research showed that the new Act has been well received by practitioners. The interviewees were generally positive about the clarity that the Act provides on the limits and possibilities of the application of special investigative powers, but they tended to comment on the proscription of controlled delivery. They criticised the fact that they were sometimes confronted with the obligation to seize small amounts of drugs, while they would have liked to let them slip by in order to get a clearer picture of the parties involved in the deal. The seizure of a shipment of any size tells the criminals involved that the police is on their trail. The respondents admitted to devising ways of avoiding these situations during the course of their work.[31]

The 2000 BOB Act has already been amended in one respect. Within the framework of the fight against terrorism the explicit ban on the deployment of criminal civilian infiltrators was toned down. In March 2003, the Minister of Justice decided that the deployment of criminals as infiltrators should be possible 'under very exceptional circumstances'. These circumstances could occur, he added, during investigations relating to terrorism (Tweede Kamer, 2002-2003).

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[28] It is permitted if it is urgently required for the investigation, if the offence carries a term of imprisonment of eight years or more, and the examining magistrate has given explicit authority.

[29] This is governed by a stringent approval procedure; the board of procurators general must agree on a decision not to seize the objects. This decision must be presented in advance to the Minister of Justice.

[30] Some interviews were conducted with judges and lawyers.

[31] Allegedly, the police listen in on the suspect's telephone conversations in a 'selective' manner, purposely 'remaining in the dark' about the transport of banned objects or substances. In this way, they can avoid the obligation to intervene.

3.2.3. The Effectiveness of the Different Methods of Investigation

With all the emphasis on special methods of investigation, one would almost forget that 'ordinary' methods are still being used, such as interrogating suspects and witnesses, conducting house searches, observing and tailing persons under investigation in the streets or in public spaces, and monitoring telephone conversations. How do the police manage to solve organised crime cases and which methods contribute most to their success?

The Dutch Organised Crime Monitor[32] looked at 40 criminal investigations into organised crime in order to determine which methods contributed most to putting a case together.[33] It turned out that wire-tapping (whether or not in combination with other methods) delivered the best results. In a large number of cases significant evidence was obtained through observation.[34] Statements from suspects and witnesses made during interrogation provide the third largest contribution to the evidence (Kleemans et al., 2002: 88-92). These three methods of investigation have been in use in the Netherlands for a long time, and in this sense they could be termed 'traditional'. In other words, it was neither financial detective work, nor the application of the special methods in use at the time (controlled delivery and infiltration, including pseudo-purchase), that brought results, but 'traditional' ways of collecting evidence.

Insofar as the researchers were able to determine, the method of infiltration was used in 3 out of the 40 cases, but in none of the cases did these actions contribute to the successful conclusion of the investigation. The method of long-term infiltration is not used in the Netherlands – undercover operations are usually short and relatively superficial. In 1999, a unique empirical research study was published on the effectiveness of all infiltration operations conducted in the Netherlands during 1996 (involving 12 criminal investigations). On the basis of interviews with police officers, public prosecutors and examining judges, and after studying the relevant police files, the researchers concluded that in only five investigations the infiltration operations contributed (partially or fully) to realising the initial goals of the operation (Kruissink et al., 1999).

In conclusion, it has to be said that despite high hopes, the financial approach to organised crime never really got off the ground. Broadening the legal framework

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[32] For more on this, see Kleemans's contribution in Part II. The Organised Crime Monitor is a continuing research project using police files on major criminal investigations to describe and analyse organised crime. The project started in 1996 and is still running. Up to December 2003, a total of 83 cases have been studied.

[33] The police investigation in these cases was closed in 1998 or in 1999.

[34] Observation can be 'static' (e.g. installing cameras trained at a warehouse or a place of residence), or 'dynamic' (e.g. placing a bug in order to trace a suspect's car).

for confiscation did not lead to any major claims against criminal organisations, with the exception of only a handful of cases. In practice, the application of the law resulted in small amounts of money recovered and in relatively insignificant cases, which were not related to organised crime.

The second track, the specification and the regulation of special investigative methods, has more importance for the fight against organised crime. It remains to be seen how effective the BOB Act will actually be, but it is a considerable improvement over the murky situation that existed before the IRT scandal. Despite all the discussions in the Netherlands about these matters, the investigating, prosecuting and trying of criminals did not suddenly come to a halt in the 1990s. It turned out that ordinary and 'traditional' methods of investigation, such as wire-taps, observation and interrogating suspects and witnesses, also yield a return when applied to the fight against organised crime.

4. Law Enforcement Agencies

Dutch citizens have an ambivalent attitude towards powerful state agencies, such as the army and the police. Their existence is recognised as a necessary evil. The Netherlands is a constitutional democracy with a fundamental distinction between Parliament and government (legislature), administration (executive) and jurisdiction (the independent judiciary). In this system the police is one of the agencies of the administration, bound by the law and controlled by the judiciary. But even inside the administration, control is institutionalised by the division of authority. Dutch police are hierarchically controlled both on the national and the local level by a dual authority: the public administrator[35] and the public prosecutor.[36] The public administrator is responsible for the management of the police and the execution of non-criminal police duties such as patrolling, while the public prosecutor is responsible for police investigations. In this way, the police are prevented from gaining too powerful a stronghold in society

In addition to this dual authority, there was always another means to control police power and that was decentralisation. Less than 15 years ago, the Dutch police consisted of approximately 150 local forces, but this fragmentation was gradually reduced and there are now 25 regional forces in the Netherlands. Against this historical background, the call for inter-regional cooperation in the fight against organised crime that was heard in the late 1980s was somewhat unusual.

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[35] At the national level, public administration exercises authority through the Minister of the Interior, at the local level through the mayor.

[36] At the national level by the Minister of Justice and the national leadership of the Public Prosecutor's Office, at the local level by the local public prosecutor.

As described earlier, the largest inter-regional collaboration (between the forces of Amsterdam, Haarlem/Schiphol and Utrecht) came to a tumultuous end in 1993, but cooperation between the police forces did not die with it. On the contrary, away from the public clamour about the IRT scandal, all over the country collaborations or 'core teams' were formed that are still operational today. More than that, in the summer of 2003 these core teams (organised crime squads) were extracted from the regional forces and made into an independent National Criminal Investigation Service (Nationale Recherche). By Dutch standards this is an unusual situation and it deserves somewhat greater attention.

It should be noted that the repression of organised crime is not just a job for the 'ordinary' police force. In the Netherlands, certain police tasks (such as detective work) are also carried out by agencies other than the police. These 'special' police organisations are charged with detecting specific types of crime such as tax fraud, economic crime and environmental crime. Because organised crime involved in the production of illegal drugs or human smuggling is usually also in breach of these specific laws, the specialised agencies participate in large-scale police investigations into organised crime. The role of the Royal Marechaussee and Customs should be mentioned in this context, since both are involved in border control (persons and goods) and investigations. A public prosecutor is always in charge of an investigation, but different ministers are responsible for the management and deployment of personnel of these agencies. The Minister of Finance, for instance, manages the Tax and Customs Services, while the Minister of Defence is responsible for the management of the Royal Marechaussee. In the past few years, cooperation between ordinary and special police branches has intensified (Fijnaut and Van de Bunt, 2000: 7-40). In investigations into certain forms of organised crime there is intensive cooperation between the ordinary police forces and other agencies, for instance in the approach to the production and export of ecstasy. The Synthetic Drugs Unit (which is one of the core teams) is a 'multidisciplinary' team. The Economic Inspection Service, to give another example, is responsible for tackling precursors. Customs and the Royal Marechaussee control the border traffic (outgoing parcel post, baggage scanners, and so on). The National Traffic Inspectorate analyses and controls the transport sector, including ecstasy couriers. And of course the regular police will carry out police investigations (Ministerie van Justitie et al., 2001). In concrete police investigations the members of all the agencies involved are supposed to work together.

4.1. From Core Teams to a National Criminal Investigation Service

Between 1993 and 1995, six core teams (former IRTs) were set up with the purpose of combating supra-regional organised crime. They were composed of 55-100 officers serving on the different regional forces. Each core team had its own area for special attention, such as a geographical region (South America, eastern Europe), infrastructure (Schiphol Airport, the port of Rotterdam), or type of organised crime

(human smuggling, heroin, synthetic drugs). Furthermore, in 1995 a so-called 'nationwide investigation team' was established to carry out investigations of national importance and, in particular, to respond to international requests for support in criminal investigations. From 1995 until the present, a total of some 800 police officers have participated in the core teams on a yearly basis, which is about 2 per cent of the total Dutch police force. In addition, separate departments to combat organised crime were created within the larger regional forces. A conservative estimate puts the total number of police officers responsible for the investigation of organised crime at 1,000. Despite the wide range of areas for special attention, a great deal of time and resources are spent on one type of organised crime, i.e. the drugs trade. An inventory of ongoing investigations into organised crime revealed that in 2001 the majority of police investigations were focused on the production, trade and/or transport of drugs.[37]

An evaluation study concluded that the core teams performed reasonably well (Klerks et al., 2002). The added value of the core teams depended not so much on a surplus of expertise, but on cohesion and continuity. Because a core team was able to devote years of investigation into, for instance, Turkish heroin cases, knowledge based on experience increased significantly, according to the researchers (Klerks et al., 2002: 86). The evaluation study was particularly critical of the way the core teams were managed, especially of the decision-making structure that assigned cases to the teams. Sometimes it took a year or more before a core team received permission to start an investigation into a certain criminal group. The researchers concluded that too many judicial and administrative authorities were allowed to have their say in the decision-making process (Klerks et al., 2002: 73-4).

In 2002, the newly formed Cabinet decided to place the assignment of cases in the hands of a central body consisting of a number of public prosecutors and public administrators, chaired by an attorney general of the Public Prosecutor's Office (Minister van Binnenlandse Zaken et al., 2002). A strong argument for this centralised arrangement was that the position of the national public prosecutor would be reinforced and that priorities in tackling organised crime could be established on the basis of a nationwide understanding of the problems involved. Another important consideration was that a national body could serve as a focal point for communicating with foreign police forces, establishing a national investigation service would improve international police cooperation, the government stated (Minister van Binnenlandse Zaken et al., 2002: 8). The different core teams would remain housed at a number of police forces all over the country, but in a formal

[37] In 2001, 146 investigations into organised crime in the Netherlands were listed and 90 of them (62 per cent) were related to drugs crimes. In 2000 slightly more than half of the investigations (53 per cent) were drug related. See Nationale Drugmonitor (2002).

sense a new National Criminal Investigation Service would come into existence, in which a total of 900 police officers would participate (Minister van Justitie et al., 2002). In mid-2003 this service became a reality. It is interesting to note that there was another argument put forward for a National Criminal Investigation Service, which may shed light on what is perhaps the hidden agenda. A preliminary study on this unit stated in so many words that the citizens feel unprotected by the police and that a loss of legitimacy could be imminent. The regional forces 'should give the highest priority to combating violent criminality and harassment in the public space'. The formation of a National Criminal Investigation Service was then justified with the argument that the regional police forces would be better able to focus on preventing the loss of legitimacy in the eyes of the citizens.[38]

When the unit was formally launched, ministers explicitly stated that the National Criminal Investigation Service is aimed at the investigation of organised crime (Ministerie van Justitie et al., 2002). International fraud or corporate crime are not within its scope of interest. A document that was recently published by the National Criminal Investigation Service elaborates on the interpretation of its task. It seems to copy its areas of special interest from the former core teams, but in some respects the document is innovative. It emphasises a crime-prevention approach to organised crime; its central point is that the investigative strategy should not focus on seizing the drugs or arresting the perpetrators, but on tackling the facilitating circumstances. Referring to the results of a recent report by the Organised Crime Monitor the document states:

> The fact that organised crime in the Netherlands is to a large extent transit crime, (implies that) the National Criminal Investigation Service will have to focus a lot of its attention on the intersections of the physical infrastructure; harbours, airports, roads, waterways. It is in these areas that the Service must gather intelligence (Korps Landelijk Politiediensten, 2003: 50).

The document also argues strongly in favour of police intervention in the logistics of organised crime. To this end 'knowledge [must be] acquired about local patterns of meeting places, storage facilities, monetary transactions and other logistic facilities'. The Service should also 'try to learn more about the contacts and connections between local (often ethnic) communities and source countries for contraband' (Korps Landelijk Politiediensten, 2003: 51). Time will tell to what extent these ambitions can be realised; as it stands, the thinking on the implementation of these intentions is still developing.

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[38] Working paper, *Misdaad laat zich tegenhouden*. Amsterdam, 2001, 11 (unpublished).

4.2. Centralising the Public Prosecutor's Office

In the last few decades, the Public Prosecutor's Office has been at the centre of the debate on the administration of criminal justice. In light of the delicate relations between politics and the judiciary, the Public Prosecutor's Office is in a precarious position. In a formal sense, it is, on the one hand, part of the independent judiciary, and, on the other hand, an administrative service within the area of responsibility of the Minister of Justice. The increased political interest in the administration of criminal justice in the Netherlands has had a direct impact on the position of the Public Prosecutor's Office. At the risk of simplifying matters, it seems clear that, partly as a result of a change in the law, the Public Prosecutor's Office is now more a part of the Department of Justice than before, and the Minister of Justice exercises more control over the actions of the public prosecutors through a strengthened central leadership. The IRT scandal and the ensuing legislation accelerated this development to a considerable extent; after all, the BOB Act requires the approval of the central leadership of the Public Prosecutor's Office (the council of Attorney Generals) and the approval of the Minister of Justice for the use of special powers (such as the deployment of civilian infiltrators, criminal infiltrators, and controlled deliveries). This structure of responsibility calls for a different type of organisation. Instead of the Public Prosecutor's Office of the recent past, with its decentralised organisation, which left more than a little discretionary room to individual public prosecutors, there is now an organisation in place where decisions are guided by directives and consultations within a hierarchical structure.

The Public Prosecutor's Office finds itself, of course, in another intermediate position: the one between investigation and trial. Public prosecutors direct the investigation and they are the only ones to decide whether or not a case comes before a judge. Until not too long ago, the general requirement that a public prosecutor direct the investigation, was almost a dead letter. In practice, the police were given a fairly free reign to conduct criminal investigations, unless there was a need for the public prosecutor or the examining judge regarding the use of methods of coercion, such as a wire-tap or a search of someone's premises. As a result of this attitude of aloofness, all sorts of investigative methods were thought out on the shop floor which would eventually lead to the IRT scandal in the 1990s. Since then, the position of the public prosecutor during the investigation has changed dramatically. The Special Powers of Investigation Act assumes his or her direct involvement in criminal investigations, whereas the role of the examining judge has been reduced. The first evaluation studies indicate that public prosecutors are indeed taking more control of investigations, although the police officers who were interviewed criticised the divergence in approach and in the interpretation of the task as used by individual public prosecutors (Bokhorst et al., 2002: 94-101). As with the National Criminal Investigation Service, the increasing need for international cooperation led to the creation of a focal point

within the organisation and, in addition to the 19 local offices, a separate Public Prosecutor's Office was created in 1996. It is in charge of enhancing international judicial and police cooperation and is responsible for managing investigations of national or international importance. Nowadays, the Public Prosecutor's Office is also responsible for the National Criminal Investigation Service.

5. Conclusions

During the 1990s, organised crime was a major issue in the Netherlands. It has left its mark on the legislation and on the organisation of the administration of criminal justice. The IRT scandal heavily influenced this process. The changes that were made have led to a situation where the police and the justice system are better prepared to combat organised crime. The crime fighters now have a better understanding of the legal opportunities and boundaries of the different methods of investigation. The organisation of the police and the Public Prosecutor's Office is more tailored to the demands of the fight against international crime. Centralisation, a hierarchical structure and pooling of knowledge and information are some of the catchwords that characterise these changes.

Attempts were also made to confront organised crime with financial repercussions. In the 1990s, this approach, aimed at taking away the proceeds of crime, rarely produced the desired results. The application of this method was frustrated by a lack of expertise and motivation among the officers responsible. The recently established National Criminal Investigation Service has devised a new strategy, designed to disrupt criminal groups' logistic operations. The benefits of this strategy are still obscure. For the time being, there is the hard fact that many cases are solved using 'traditional' police methods, such as observation, interrogation and wire-tapping. The effects of the recent Special Powers of Investigation Act on criminal investigations are also not yet clear.

In addition to the criminal approach, a course of action based on prevention was developed from the early 1990s onwards. The administrative approach of the BIBOB Act and the MOT Act are the main examples of this trend. The preventive approach has clearly taken root in the Netherlands, but the problem of measuring its effects remains an issue. Under the MOT Act, many unusual transactions are being reported by financial institutions, but it is unclear whether or not the MOT regime has managed to stop criminals from laundering the proceeds of their crimes. In a more general sense, it can be said that it is difficult to gauge the effects of preventive measures. The question for the near future will be how long the services involved are willing to incur visible costs for invisible results.

While all sorts of measures were taken to tackle organised crime and while the police and the Public Prosecutor's Office were reorganised to deal with this type of criminality, the public's interest in organised crime waned considerably. These

days, the minds of the Dutch citizens are occupied by feelings of insecurity in their own neighbourhood, by loitering youngsters and by various kinds of antisocial behaviour. Organised crime remains an important issue nonetheless. The attention given to incidents such as the killing of a well-known criminal or the publication of a research report on organised crime demonstrates that the theme of organised crime still generates a great deal of interest and concern.[39]

References

A Combined Effort to Combat Ecstasy. A Plan to Intensify the Dutch Policy on Synthetic Drugs. The Hague, Ministry of Justice, 2001.

Action Plan of 28 April 1997 to Combat Organised Crime, *Official Journal* C251, 15 August 1997.

Block, A. (1991), *Perspectives on Organising Crime*. Dordrecht, Kluwer Academic Publishers.

BLOM (2001), *Effectmeting 2000*. Arnhem, Gouda Quint.

Bokhorst, R., C. De Kogel and C. Van der Meij (2002), *Evaluatie van de Wet BOB – fase 1*. Meppel, Boom Juridische Uitgevers.

Bovenkerk, F. and Y. Yeşilgöz (1998), *De maffia van Turkije*. Amsterdam, Meulenhoff-Kritak.

Bovenkerk, F. (2001), *Misdaadprofielen*. Amsterdam, Meulenhoff.

Brief aan de Tweede Kamer van de Ministers van Justitie en van Binnenlandse Zaken en Koninkrijksrelaties. The Hague, 15 November 2002.

Bunt, Van de H. and C. Van der Schoot (eds) (2003), *Prevention of Organised Crime. A Situational Approach*. The Hague, Boom Juridische Uitgevers.

Bunt, Van de H., C. Fijnaut and H. Nelen (2001), *Post-Fort. Evaluatie van het strafrechtelijk onderzoek (1996-1999)*. The Hague, Sdu Uitgevers.

Directive 2001/97/EG of the European Parliament and European Council, *Official Journal* L344/7.

Duyne, Van P. (1991), 'Crime Enterprises and the Legitimate Industry', in C. Fijnaut and J. Jacobs (eds), *Organised Crime and its Containment. A Transatlantic Initiative*. Deventer, Kluwer Law and Taxation, 55-71.

Duyne, Van P. (1995), *Het spook en de dreiging van de georganiseerde misdaad*. The Hague, Sdu Uitgevers.

Duyne, Van P., R. Kouwenberg and G. Romeijn (1990), *Misdaadondernemingen. Ondernemende misdadigers in Nederland*. Deventer, Gouda Quint.

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[39] As a result of the report written by Kleemans et al. (2002) – at the request of the Minister of Justice – no less than 66 questions were put to the Minister by members of Parliament (Tweede Kamer, 2002-2003).

Enquêtecommissie Opsporingsmethoden (1995-1996), *Inzake Opsporing. Eindrapport*. The Hague, Sdu Uitgevers.

European Council Summit of Tampere in 1999, *Presidency Conclusions Tampere European Council of 15-16 October 1999*.

Faber, W. and A. Van Nunen (2002), *Het ei van Columbo? Evaluatie van het project Financieel Rechercheren*. Oss, Faber Organisatievernieuwing.

Faber, W. and A. Van Nunen (2004), *Uit onverdachte bron. Evaluatie van de keten ongebruikelijke transacties*. Oss, Faber Organisatievernieuwing.

Fijnaut, C. (ed.) (2002), *The Administrative Approach to Organised Crime in Amsterdam. Backgrounds and Developments*. Amsterdam, Public Order and Safety Department City of Amsterdam.

Fijnaut, C. and H. Van de Bunt (2000), 'De toekomst van de landelijke bijzondere opsporingsdiensten in het kader van een "goede politiezorg"', in H. Van de Bunt and J. Nelen (eds), *De toekomst van de bijzondere opsporingsdiensten*. The Hague, WODC, 7-37.

Fijnaut, C. and J. Jacobs (1991), 'Preface', in C. Fijnaut and J. Jacobs (eds), *Organised Crime and its Containment. A Transatlantic Initiative*. Deventer, Kluwer Law and Taxation Publishers, v-vii.

Fijnaut, C., F. Bovenkerk, G. Bruinsma and H. Van de Bunt (1998), *Organised Crime in the Netherlands*. The Hague, Kluwer Law International.

Fijnaut, C. and F. Bovenkerk (1996), 'Georganiseerde criminaliteit in Nederland. Een analyse van de situatie in Amsterdam', in Enquêtecommissie opsporingsmethoden, *Inzake opsporing*, *Bijlage XI*. The Hague, Sdu Uitgevers.

Garland, D. (1996), 'The Limits of the Sovereign State. Strategies of Crime Control in Contemporary Society', *The British Journal of Criminology* 36/4: 445-71.

Gradowski, M. and J. Siegler (1997), *Geldwäsche, Gewinnabschöpfung. Erste Erfahrungen mit den neuen gesetzlichen Regelungen*. Wiesbaden, Bundeskriminalamt.

Hartmann, A. (2001), 'De nieuwe anti-corruptiebepalingen in het Nederlandse Wetboek van Strafrecht', in A. Hartmann and E. Pols (eds), *Corruptie. Van taboe naar sociale verandering*. Rotterdam, Erasmus Universiteit Rotterdam, 31-49.

Heddeghem, Van K. (2002), *Gewapend bestuursrecht gescreend*. Antwerp-Apeldoorn, Maklu.

Huisman W., M. Huikeshoven and J. Struiksma (2004), *Evaluatie-onderzoek bestuurlijke aanpak Amsterdam* (forthcoming).

Keyser-Ringnalda, L. (1994), *Boef en buit. De ontneming van wederrechtelijk verkregen vermogen*. Arnhem, Gouda Quint.

Kleemans, E., E. Van den Berg and H. Van de Bunt (1998), *Georganiseerde criminaliteit in Nederland. Rapportage op basis van de WODC-monitor*. The Hague, WODC.

Kleemans, E., M. Van Brienen and H. Van de Bunt (2002), *Georganiseerde criminaliteit in Nederland*. Meppel, Boom Juridische Uitgevers.

Klerks, P., C. In 't Velt and A. Van Wijk (2002), *De voorhoede van de opsporing. Evaluatie van de kernteams als instrument in de aanpak van zware georganiseerde criminaliteit*. Apeldoorn, NPA.

Korps Landelijke Politiediensten (2003), *Opsporen en tegenhouden van georganiseerde criminaliteit. Richtinggevend document voor de nationale recherche*. Driebergen, KLPD.

Kruissink, M., A. Van Hoorn and J. Boek (1999), *Infiltratie in het recht en in de praktijk*. The Hague, WODC.

Lankhorst, F. and H. Nelen (2003), *Dilemmas Facing the Legal Professions and Notaries in their Professional Relationship with Criminal Clients. Falcone Project. National Report of the Netherlands*. Amsterdam, Vrije Universiteit.

Levi, M. and L. Osofsky (1995), *Investigating, Seizing and Confiscating the Proceeds of Crime*. London, Home Office.

Meldpunt Ongebruikelijke Transacties (2001), *Jaarlijks verslag*. The Hague, Ministerie van Justitie.

Meldpunt Ongebruikelijke Transacties (2003), *Jaarlijks verslag*. The Hague, Ministerie van Justitie.

Middelburg, B. (1988), *De mafia in Amsterdam*. Amsterdam, De Arbeiderspers.

Ministerie van Justitie and Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2001), *Nota Criminaliteitsbeheersing. Investeren in een zichtbare overheid*. The Hague, Ministerie van Justitie.

Ministerie van Justitie and Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2002), *Nota Criminaliteitsbeheersing. Investeren in een zichtbare overheid*. The Hague, Ministerie van Justitie.

Ministers van Binnenlandse Zaken en Koninkrijksrelaties en van Justitie, *Nota landelijke en bovenregionale recherche*. The Hague, 27 February 2002.

Mul, V. (1999), *Banken en witwassen*. Arnhem, Gouda Quint.

Nationale Drugmonitor (2002), *Jaarbericht 2002*. Utrecht, Bureau NDM.

Nelen, H. (2003), *Integriteit in publieke functies*. The Hague, Boom Juridische Uitgevers.

Nelen, H., 'Quicksand. The Proceeds-of-Crime Approach', in D. Siegel et al. (eds), *Global Organised Crime. Trends and Developments*. Dordrecht-Boston-London, Kluwer Academic Publishers, 127-36.

Nelen, J. and V. Sabee (1998), *Het vermogen te ontnemen. Evaluatie van de ontnemingswetgeving*. The Hague, WODC.

Nelen, J. (2000), *Gelet op de wet. De evaluatie van strafwetgeving onder de loep*. Amsterdam, Vrije Universiteit.

Nota *Integriteit Financiële sector en terrorismebestrijding*. Tweede Kamer, 2001-2002, 28 106, No. 2.

Nota *De georganiseerde criminaliteit in Nederland*. Tweede Kamer, 1992-1993, 22 838, No. 2.

Parlementaire Enquêtecommissie Opsporingsmethoden (1996), *Inzake opsporing. Enquête opsporingsmethoden. Bijlage VII: Eindrapport onderzoeksgroep Fijnaut*. The Hague, Sdu Uitgevers.

Regionaal Platform Criminaliteitsbeheersing Rotterdam (2000), *Regionaal Platform voor de Rotterdamse Haven and Industrie. Security Mainport Rotterdam. Een betrouwbare logistieke keten*. Rotterdam, Platform Criminaliteitbeheersing Rotterdam.

Samenleving en criminaliteit. Een beleidsplan voor de komende jaren. Tweede Kamer, 1984-1985, 18 995, Nos. 1-2.

Shetter, W. (2002), *The Netherlands in Perspective. The Dutch Way of Organising a Society and its Setting*. Utrecht, NCB.

Spronken, T. (2001), *Verdediging*. Deventer, Gouda Quint.

Terlouw, G. and U. Aron (1996), *Twee jaar MOT. Een evaluatie van de uitvoering van de Wet melding ongebruikelijke transacties*. Arnhem, Gouda Quint.

Tweede Kamer, 2002-2003, 26 269, No. 51.

Tweede Kamer, 2001-2002, 28 106, No. 2.

Tweede Kamer, 2002-2003, 27 834, No. 28.

Vrij Nederland, 'Rechterlijke macht onder vuur', No. 41, 11 October 2003.

Wielen, Van der L. (2001), 'De screenings- en bewakingsaanpak. Een instrument in de criminaliteitsbestrijding', in C. Fijnaut (ed.), *De bestuurlijke aanpak van georganiseerde criminaliteit in Amsterdam*. Amsterdam, Directie Openbare Orde en Veiligheid, 63-78.